

## STATEMENT OF EMERGENCY

805 KAR 8:060E

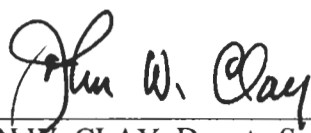
The 2006 General Assembly amended certain provisions of Chapters 351 and 352 of the Kentucky Revised Statutes regarding the assessment and imposition of civil monetary penalties against licensed premises. The new provisions go into effect on July 12, 2006. It is necessary to promulgate this emergency regulation because no regulations currently exist that would allow the enforcement of those provisions.

An ordinary administrative regulation is not sufficient because no regulations currently exist that would allow the Department for Natural Resources, Office of Mine Safety and Licensing or the Mine Safety Review Commission to implement the amendments to KRS Chapters 351 and 352 regarding civil monetary penalties against licensees. The statutory amendments are effective July 12, 2006, and ordinary administrative regulations would not become effective until after that date.

This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

  
\_\_\_\_\_  
ERNIE FLETCHER, Governor

7.7.06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
JOHN W. CLAY, Deputy Secretary, for  
LAJUANA S. WILCHER, Secretary,  
Environmental and Public Protection Cabinet

7-5-2006  
\_\_\_\_\_  
Date

1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Natural Resources

3 Office of Mine Safety and Licensing

4 (Emergency Amendment)

5 805 KAR 8:060E. Criteria for the imposition and enforcement of sanctions against licensed  
6 premises.

7 RELATES TO: KRS 351.1041, 351.175, 351.194, 352.010-352.550

8 STATUTORY AUTHORITY: KRS 351.025(2), 351.070(13), 351.070(15), 352.180(4).

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the  
10 Secretary of the Environmental and Public Protection Cabinet [~~Commissioner of the Department~~  
11 ~~of Mines and Minerals~~] to promulgate administrative regulations [~~he deems~~] necessary and  
12 suitable for the proper administration of KRS Chapter 351 [~~351.090 to 351.9901~~]. KRS  
13 351.025(2) requires the Department for Natural Resources [~~of Mines and Minerals~~] to  
14 promulgate administrative regulations that establish comprehensive criteria for the Mine Safety  
15 Review Commission's imposition of penalties against licensed premises for violations of [~~if an~~  
16 ~~owner or part owner intentionally orders~~] mine safety laws [~~to be violated~~] that place miners in  
17 imminent danger of serious injury or death. KRS 351.070(15) requires the Cabinet to  
18 promulgate administrative regulations providing for the manner and method of assessing  
19 penalties by the Commissioner of the Department for Natural Resources against licensed  
20 facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans and mine  
21 ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4)

1 requires the imposition of civil monetary penalties and other sanctions for failure to comply with  
2 the reporting requirements of KRS 352.180. This administrative regulation establishes the  
3 criteria for the revocation, suspension, or probation of a mine's license, and the imposition of  
4 civil monetary penalties against a licensed premises [~~upon an adjudication by the Mine Safety~~  
5 ~~Review Commission that an owner or part owner of a licensed premises has intentionally~~  
6 ~~ordered this type of violation~~].

7 Section 1. Definitions.

8 (1) "First offense" means the first violation by a licensed premises of a mine safety law  
9 which places a miner in imminent danger of serious injury or death, as adjudicated by the Mine  
10 Safety Review Commission, including but not limited to failure to comply with the reporting  
11 requirements set forth in KRS 352.180(1), or the violation of a roof control plan or mine  
12 ventilation plan which could lead to imminent danger or serious physical injury.

13 (2) "Licensed facility" shall have the same meaning as the term "licensee" as that term is  
14 defined at KRS 351.010(1)(m) and 352.010(1)(r).

15 (3) "Licensed premises" shall have the same meaning as the term "licensee" as that term  
16 is defined at KRS 351.010(1)(m) and 352.010(1)(r).

17 (4) "Mine ventilation plan" means the ventilation plan and any revision to the mine  
18 ventilation plan approved by the United States Mine Safety and Health Administration.

19 (5) "Related successor" means an entity that obtains a license for a mine that is owned  
20 by one or more owners or part-owners of a previous licensee at the same location.

21 (6) "Second offense" means the second violation by a licensed premises of a mine safety  
22 law which places a miner in imminent danger of serious injury or death, as adjudicated by the  
23 Mine Safety Review Commission, including but not limited to failure to comply with the

1 reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan or  
2 mine ventilation plan which could lead to imminent danger or serious physical injury.

3 (7) “Subsequent offense” means any violation by a licensed premises of a mine safety  
4 law which places a miner in imminent danger of serious injury or death, as adjudicated by the  
5 Mine Safety Review Commission, including but not limited to failure to comply with the  
6 reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan or  
7 mine ventilation plan which could lead to imminent danger or serious physical injury.

8 (8) Third offense” means the third violation by a licensed premises of a mine safety law  
9 which places a miner in imminent danger of serious injury or death, as adjudicated by the Mine  
10 Safety Review Commission, including but not limited to failure to comply with the reporting  
11 requirements set forth in KRS 352.180(1), or the violation of a roof control plan or mine  
12 ventilation plan which could lead to imminent danger or serious physical injury.

13 Section 2 [4]. Criteria for the imposition and enforcement of sanctions against licensed  
14 premises for violations of mine safety laws.

15 (1) If ~~[an owner or part owner of]~~ a licensed premises violates any mine safety law  
16 which places a miner in imminent danger of serious injury or death, which is [commits] a first  
17 offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may  
18 place the licensed premises on probation for a period of time to be determined at the discretion of  
19 the commission, pursuant to KRS 351.194(5). The commission may also impose a civil  
20 monetary penalty against the licensed premises not to exceed the gross value of the production of  
21 the licensed premises for up to ten (10) working days.

22 (2) If a licensed premises is placed on probation for a first offense violation pursuant to  
23 subsection (1) of this section, the commission may impose the terms of the probation, and it may

1 impose penalties for the violation of the terms of probation, including the suspension or  
2 revocation of the mine's license. If the licensed premises satisfies the terms of its probation, the  
3 probation shall automatically expire at the end of the probationary period.

4 (3) The department may file charges against a licensed premises for any alleged violation  
5 of its probationary terms. Hearings regarding the allegations shall be conducted by the Kentucky  
6 Mine Safety Review Commission, pursuant to 825 KAR 1:020.

7 (4) If [~~an owner or part owner of~~] a licensed premises violates any mine safety law  
8 which places a miner in imminent danger of serious injury or death which is [commits] a second  
9 offense, as adjudicated by the Kentucky Mine Safety Review Commission, the commission may  
10 suspend or revoke the mine's license for a period of not less than two (2) calendar years, or for a  
11 greater period of time, pursuant to KRS 351.194(5) and (6). The commission may also impose a  
12 civil monetary penalty against the licensed premises not to exceed the gross value of the  
13 production of the licensed premises for up to ten (10) working days.

14 (5) If a mine license is suspended for a second offense violation pursuant to subsection  
15 (4) of this section, it shall be automatically reinstated at the end of the period of suspension. If  
16 the mine's license is revoked, the licensed premises may apply to the Office of Mine Safety and  
17 Licensing [~~Department of Mine and Minerals~~] for the reinstatement of its mine license at the end  
18 of the revocation period. The Office of Mine Safety and Licensing [~~department~~] may grant or  
19 deny the application. The Office may grant the application only if the licensed premises is in full  
20 compliance with any Orders of the Mine Safety Review Commission.

21 (6) Upon the adjudication by the Mine Safety Review Commission of a third offense by  
22 [~~the owner or part owner of~~] a licensed premises for a violation of any mine safety law which  
23 places a miner in imminent danger of serious injury or death, the commission shall revoke the

1 mine's license for a period of not less than three (3) calendar years, or for a greater period of  
2 time, pursuant to KRS 351.194(5) and (6), up to and including a permanent revocation with no  
3 possibility of reinstatement. If the revocation is for a period of less than a permanent revocation  
4 with no possibility of reinstatement, the licensed premises may apply to the Office of Mine  
5 Safety and Licensing [~~Department of Mines and Minerals~~] for the reinstatement of its mine  
6 license at the end of the revocation period. The Office of Mine Safety and Licensing  
7 [~~department~~] may grant or deny the application. The Office may grant the application only if the  
8 licensed premises is in full compliance with any Orders of the Mine Safety Review Commission.  
9 If a third offense is committed by [~~an owner or part owner of~~] a licensed premises, the  
10 commission may also impose a civil monetary penalty against the licensed premises not to  
11 exceed the gross value of the production of the licensed premises for up to ten (10) working  
12 days.

13 (7) If a licensed premises commits a violation of any mine safety law which results in the  
14 death of a miner, whether the violation is first or subsequent offense, the Mine Safety Review  
15 Commission may suspend or revoke the mine's license, including permanent revocation of the  
16 license without the possibility for reinstatement. If the commission suspends the mine's license,  
17 it shall be automatically reinstated at the end of the period of suspension. If the commission  
18 revokes the mine's license for a period of less than a permanent revocation with no possibility of  
19 reinstatement, the licensed premises may apply to the Office of Mine Safety and Licensing for  
20 the reinstatement of its mine license at the end of the revocation period. The Office of Mine  
21 Safety and Licensing may grant or deny the application. The Office may grant the application  
22 only if the licensed premises is in full compliance with any Orders of the Mine Safety Review  
23 Commission. The commission may also impose a civil monetary penalty against the licensed

1 premises not to exceed the gross value of the production of the licensed premises for up to ten  
2 (10) working days.

3 (8) [7] If a licensed premises that has committed one (1) or more violations pursuant to  
4 subsection (1), (4), ~~[or] (6)~~ , or (7) of this section is subsequently sold or goes out of business,  
5 any penalties imposed on that licensed premises for those violations shall be imposed upon any  
6 entity that is determined by the commission to be ~~[the legal]~~ a related successor to the licensed  
7 premises in question, after a hearing conducted pursuant to KRS 351.194. (28 Ky.R. 2132; Am.  
8 29 Ky.R. 716; eff. 9-16-02.)

9 Section 3. Criteria for the imposition and enforcement of civil penalties against licensed  
10 facilities for violations of roof control or mine ventilation plans.

11 (1) Amount of penalty. The Commissioner or his or her designee shall assess monetary  
12 penalties to a licensed facility which has been issued a non-compliance or closure order for a  
13 violation of the provisions of KRS Chapters 351 and 352 relating to roof control plans and mine  
14 ventilation plans that could lead to imminent danger or serious physical injury as follows:

15 (a) If the licensed facility has had no previous violations relating to roof control or mine  
16 ventilation plans that could lead to imminent danger or serious physical injury, the penalty shall  
17 be not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars  
18 (\$2,500).

19 (b) If the licensed facility has had one prior offense relating to the violation of the roof  
20 control or mine ventilation plan that resulted in the assessment of a penalty pursuant to this  
21 section, the penalty shall be not less than two thousand five hundred dollars (\$2,500) nor more  
22 than four thousand dollars (\$4,000).

1        (c) If the licensed facility has had two or more offenses relating to a violation of the roof  
2 control or mine ventilation plan that resulted in an assessment of a penalty pursuant to this  
3 section, the penalty shall be not less than four thousand dollars (\$4,000) nor more than five  
4 thousand dollars (\$5,000).

5        (d) In the event that the violation of the roof control or mine ventilation plan results in  
6 the serious physical injury or death of a miner, the penalty shall be five thousand dollars  
7 (\$5,000), notwithstanding whether the licensed facility has been previously cited for such  
8 violation or assessed a penalty pursuant to this section.

9        (e) Factors to be considered. In determining the amount of the penalty to be assessed,  
10 consideration shall be given to the following:

11        (1) The licensed premises' cooperation with investigators;

12        (2) The severity of the harm done, such as whether the violation resulted in:

13                (a) Death;

14                (b) Serious physical injury; or

15                (c) The placement of an individual in imminent harm;

16        (3) The licensed premises' acceptance of responsibility for its actions;

17        (4) The licensed premises' history of violations;

18        (5) The licensed premises' adjudicated violations in other states;

19        (6) Any mitigating circumstances; and

20        (7) Any aggravating circumstances.

21        (2) Notification. The Commissioner or his or her designee shall notify a licensed facility  
22 that has been assessed a penalty to this section of the amount of the assessment.



1       (3) Service. The notice of proposed penalty assessment shall be served on the licensed  
2 facility within thirty (30) days after the proposed penalty assessment is completed. Failure to  
3 serve the proposed assessment within thirty (30) days shall not be grounds for dismissal of all or  
4 part of the assessment unless the licensee proves actual and substantial prejudice as a result of  
5 the delay. Service shall be made by one (1) or more of the following methods:

6       (a) The Commissioner or his or her designee may place a copy of the Notice of Proposed  
7 Assessment in an envelope, and address the envelope to the licensed facility at the address  
8 provided by the licensee to the Office of Mine Safety and Licensing in its most recent license  
9 application. The Office of Mine Safety and Licensing shall affix adequate postage and place the  
10 sealed envelope in the United States mail as certified mail return receipt requested. The Office  
11 of Mine Safety and Licensing shall maintain a record of each assessment and shall include  
12 therein the fact of mailing and the return receipt, when received. If the envelope is returned with  
13 an endorsement showing failure of delivery, that fact shall be entered in the record. Service by  
14 certified mail is complete upon delivery of the envelope, upon acceptance by any person  
15 eighteen (18) years of age or older at the licensee address, upon refusal to accept by any person  
16 at the licensee address, upon the United States Postal Service's inability to deliver the assessment  
17 if properly addressed to the licensee, or upon failure to claim the assessment prior to its return to  
18 the Office of Mine Safety and Licensing by the United States Postal Service. The return receipt  
19 shall be proof of acceptance, refusal, inability to deliver or failure to claim the assessment; or

20       (b) The Commissioner or his or her designee may cause the assessment, with necessary  
21 copies, to be transferred for service to a person authorized by the Secretary who shall serve the  
22 assessment, and the return thereon shall be proof of the time and manner of service.

23       (4) Options of the licensed facility issued a notice of proposed assessment.

1        (a) Waiver. The licensed facility issued a notice of proposed assessment may choose not  
2 to contest the assessment and a final order shall be entered by the Mine Safety Review  
3 Commission finding that:

4        1. The licensed facility has waived its right to an administrative hearing on the amount of  
5 the proposed assessment; and

6        2. The fact of the violation cited in the non-compliance or closure order is deemed  
7 admitted; and

8        3. The proposed penalty is due and payable within thirty (30) days after the entry of the  
9 final order; and

10       4. That the violation is a first, second, third or subsequent offense.

11       (b) Petition for administrative hearing. The licensed facility may contest the proposed  
12 assessment and fact of violation by submitting a petition for administrative hearing in accordance  
13 with 825 KAR 1:020.

14       (5) Nothing contained within this section of this administrative regulation shall be  
15 construed to impair or contravene the Office of Mine Safety and Licensing's authority to seek  
16 sanctions pursuant to Section 2 of this regulation or to prevent the Mine Safety Review  
17 Commission from imposing the sanctions in Section 2 of this regulation in addition to the  
18 monetary penalties assessed pursuant to this Section.

19       Section 4. Criteria for the imposition and enforcement of sanctions against licensed  
20 facilities for failure to comply with the requirements for reporting an accident.

21       (1) General. Whenever the superintendent, mine manager, mine foreman or a mine  
22 foreman's designee fails to comply with the reporting requirements set forth in KRS 352.180(1),  
23 the Mine Safety Review Commission may revoke, suspend or probate the mine license for a

period of time to be determined at the discretion of the commission. The commission shall also assess a civil monetary penalty against the licensed premises of not less than ten thousand dollars nor more than one hundred thousand dollars for the failure.

(2) Point system for computing the civil monetary penalty. The Mine Safety Review Commission shall apply the point system described in this subsection to evidence produced by the Office of Mine Safety and Licensing necessary to determine the amount of civil monetary penalty to assess against the licensee pursuant to this section. Points shall be assigned as follows:

(a) Size of the mine. Up to fifteen points (15) shall be assigned for the size of the mine. The size of the mine shall be based on the tonnage produced from the mine in the previous calendar year, or in the case of a mine opened or owned less than one full calendar year, the tonnage prorated to an annual basis. Points shall be assigned as follows:

1. 0--300,000 tons, zero (0) points.
2. 300,000-500,000 tons, five (5) points.
3. 500,000-1 million tons, ten (10) points.
4. Over 1 million tons, fifteen (15) points.

(b) History of previous violations. Up to twenty (20) points shall be assigned based on the history of violations at the mine, cited against the licensee during the preceding twenty-four (24) month period. Points shall be assigned as follows:

1. 1-5 previous violations, zero (0) points.
2. 6-10 previous violations, five (5) points.
3. 11-20 previous violations, ten (10) points.
4. 21-30 previous violations, fifteen (15) points.

1        5. Over 30 previous violations, twenty (20) points.

2        (c) Negligence. Up to twenty-five (25) points shall be assigned based on the degree of  
3 negligence the licensee exhibited in failing to report the accident. Points shall be assigned as  
4 follows:

5        1. No negligence. There is no negligence on the part of the licensee when it exercised  
6 diligence and could not have prevented the failure to comply with the reporting requirements.  
7 Zero (0) points shall be assigned for no negligence.

8        2. Negligence. There is negligence when the licensee has mitigating circumstances for  
9 its failure to comply with the reporting requirements. Fifteen (15) points shall be assigned for  
10 negligence.

11        3. Reckless disregard. There is reckless disregard when the licensee exhibits the absence  
12 of the slightest degree of care in complying with the reporting requirements. Twenty- five (25)  
13 points shall be assigned for reckless disregard.

14        (d) Gravity. Gravity is the severity of the accident and whether persons were at risk of  
15 serious physical injury or death based on the failure to comply with the reporting requirements.  
16 A total of thirty (30) points shall be assigned for gravity. Points shall be assigned as follows:

17        1. Severity. A total of twenty (20) points shall be assigned as follows for the severity of  
18 any injuries:

19        a. No serious physical injury occurred, zero (0) points.

20        b. A serious physical injury occurred, ten (10) points

21        c. A fatality occurred, twenty (20) points.

1        2. Persons at risk of serious physical injury or death. A total of ten (10) points shall be  
2 assigned based on whether persons were at risk of serious physical injury or death by the failure  
3 to comply with the reporting requirements. Points shall be assigned as follows:

4        a. No personnel were at risk, zero (0) points.

5        b. Person(s) were at risk, ten (10) points.

6        (3) Determination of amount of penalty. The Mine Safety Review Commission shall  
7 determine the amount of penalty by converting the total number of points assigned under  
8 subsection (2) of this section of this administrative regulation to a dollar amount, according to  
9 the schedule in Appendix A of this administrative regulation.

10        Section 5. Incorporation of Reference.

11        (1) "Notice of Proposed Assessment," July 12, 2006, OMSL Form No. NPA-1 is  
12 incorporated by reference.

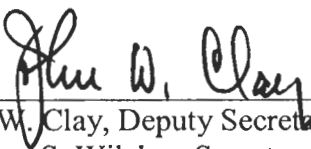
13        (2) This material may be inspected, copied, or obtained, subject to applicable copyright  
14 law, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky  
15 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

**APPENDIX A**

<b><u>POINTS</u></b>	<b><u>AMOUNT</u></b>
<u>0</u>	<u>\$10,000</u>
<u>5</u>	<u>\$15,000</u>
<u>10</u>	<u>\$20,000</u>
<u>15</u>	<u>\$25,000</u>
<u>20</u>	<u>\$30,000</u>
<u>25</u>	<u>\$35,000</u>
<u>30</u>	<u>\$40,000</u>
<u>35</u>	<u>\$45,000</u>
<u>40</u>	<u>\$50,000</u>
<u>45</u>	<u>\$55,000</u>
<u>50</u>	<u>\$60,000</u>
<u>55</u>	<u>\$65,000</u>
<u>60</u>	<u>\$70,000</u>
<u>65</u>	<u>\$75,000</u>
<u>70</u>	<u>\$80,000</u>
<u>75</u>	<u>\$85,000</u>
<u>80</u>	<u>\$90,000</u>
<u>85</u>	<u>\$95,000</u>
<u>90</u>	<u>\$100,000</u>

In re: 805 KAR 8:060E. (Pages 1-12)

7-5-2006  
Date

  
\_\_\_\_\_  
John W. Clay, Deputy Secretary, for  
LaJuana S. Wilcher, Secretary,  
Environmental and Public Protection Cabinet

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Holly McCoy

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the imposition of sanctions, including civil monetary penalties against licensees for violations of mine safety laws that create an imminent danger of serious physical injury or death.

(b) The necessity of this administrative regulation: Imposition of civil monetary penalties against licensees for non-intentional violations of mine safety laws, for violations of roof control and mine ventilation plans, and for non-compliance with accident reporting requirements is not currently regulated in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.025(2) authorizes the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the Cabinet to promulgate administrative regulations providing for the manner and method of assessing civil monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.



(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to the imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment to the administrative regulation will add definitions specific to the regulation. The amendment will eliminate the element of intent by owners or part-owners of licensees to violate mine safety laws prior to the imposition of sanctions, including civil penalties. The amendment adds provisions for the imposition of monetary civil penalties against licensees for violations of roof control and mine ventilation plans and for failure to comply with the reporting requirements for accidents in mines.

(b) The necessity of the amendment to this administrative regulations: The 2006 General Assembly amended KRS 351.025(2) to delete the requirement that the owners or part-owners must intentionally violate or order the violation of mine safety laws prior to the imposition of sanctions, including civil monetary penalties, against licensees. KRS 351.070 was amended to allow the imposition of civil monetary penalties for violations of roof control and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180 was amended to authorize the imposition of sanctions, including civil monetary penalties against licensees for violations of the accident reporting requirements in KRS 352.180.

(c) How the amendment conforms to the content of the authorizing statute: KRS 351.025(2) authorizes the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the Cabinet to promulgate administrative regulations providing for the manner and method of assessing civil monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.

(d) How the amendment will assist in the effective administration of statutes: This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to the imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals and entities engaged in the mining of coal in the Commonwealth will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be subjected to the imposition of sanctions, including civil penalties for violations of mine safety laws that could lead to imminent danger or serious physical injury.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities that comply with mine safety laws will not be subject to any cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with mine safety laws will reduce the number of incidents that could result in an imminent danger or serious physical injury or death.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The costs associated with introducing a penalty assessment process will be minimal and will be absorbed by the agency. The number of administrative hearings may increase, but can be incorporated into current operations without additional staff or resources at this time.

(b) On a continuing basis: Same as above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees are not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly establish or increase any fee.

(9) TIERING: Is tiering applied? Yes. Tiering was applied as to the size of the mine based on coal tonnage produced in determining the imposition and enforcement of sanctions for failure to comply with accident reporting requirements.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

805 KAR 8:060

Contact Person: Holly McCoy

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes  
X No     

2. What units, parts or divisions of state and local governments (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?  
The Office of Mine Safety and Licensing and the Mine Safety Review Commission.

3. Identify each state and federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. As contained within the enacted Senate Bill 200 and House Bill 572 of the 2006 General Assembly, the amended statutes of KRS 351.025(2), 351.070(13), 351.070(15) and 352.180(4) allow for the promulgation of implementing regulations. Specifically, these regulations would provide the manner and method of assessment of penalties against licensed facilities for violations of safety laws.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?  
Revenue generated from penalty assessments for violations of mine safety laws is unpredictable.

Penalties can only be assessed for violations which place miners in imminent danger. These violations are anticipated to occur infrequently.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Unchanged from the first year.

(c) How much will it cost to administer this program for the first year? The costs associated with introducing a penalty assessment process will be absorbed by the agency without additional staff or resources.

(d) How much will it cost to administer this program for subsequent years? Unchanged from the first year.

## SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The Notice of Proposed Assessment, Form NPA-1, is the one page assessment form that notifies a licensee of the civil monetary penalty that the Commissioner of the Department for Natural Resources has assessed against it pursuant to KRS 351.070(15).

## Notice of Proposed Assessment

To:

Date:

State File No.

County:

Mine Name/No.

License No.

Inspection No.

Having reviewed Notice of Non-Compliance # \_\_\_\_\_ and/or closure Order # \_\_\_\_\_ the office of Mine Safety and Licensing is hereby proposing a penalty assessment in the amount of \$ \_\_\_\_\_. Please note that this proposed penalty assessment is based upon information currently available to the Office. If additional information becomes available, the Office may determine that this proposed penalty is not appropriate and may seek a different amount. Also, if you choose to negotiate a settlement prior to the initiation of an assessment conference, you may contact the Executive Director of the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, KY 40601, telephone number: (502) 573-0140.

Should you decide not to negotiate, you have two (2) options remaining to resolve the proposed assessment. You may (1) choose not to contest the amount of the proposed assessment or the violation in which case a final order of the Mine Safety Review Commission will be entered; or (2) file a petition of appeal with the Mine Safety Review Commission. See 825 KAR 1:020, Section 4. Please indicate your decision below, sign this document and return the original and a copy to the addresses listed below within thirty (30) days of service of this notice.

*Note: The Kentucky Bar Association has determined that the appearance of an individual who is not a licensed attorney, on behalf of a third person, corporation, or another entity constitutes the unauthorized practice of law. Corporations or other entities must be represented by counsel. Individuals may represent themselves.*

**If you fail to respond within thirty (30) days of service of this notice, the Mine Safety Review Commission will enter an appropriate final Order in conformity with 825 KAR 1:020, Section 4 and 805 KAR 8:060, Section 3.**

\_\_\_\_\_  
Executive Director, Office of Mine Safety and Licensing

☐ I choose not to contest the amount of the proposed assessment and I understand that an appropriate final Order in conformity with 825 KAR 1:020, Section 4 and 805 KAR 8:060, Section 3 will be entered.

☐ I desire an administrative hearing. Attached is a petition of appeal.

Authorized Agent for:

\_\_\_\_\_  
Name of Business Entity and Telephone Number (please print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name and Telephone Number (please print)

\_\_\_\_\_  
Name (signature)

\_\_\_\_\_  
Date

Please mail the completed original of this notice to:

Executive Director  
Office of Mine Safety and Licensing  
1025 Capital Center Drive  
Frankfort, KY 40601

and a copy to:

Mine Safety Review Commission  
132 Brighton Park Blvd  
Frankfort, KY 40601

NPA-1